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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/760,030      | 01/16/2004  | Richard L. Borders   | 8266-1153           | 8500             |

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EXAMINER

SANTOS, ROBERT G

ART UNIT PAPER NUMBER

3673

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/760,030             | BORDERS ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Robert G. Santos       | 3673                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 14-21, 23-30, 32-38 and 41-52 is/are pending in the application.
- 4a) Of the above claim(s) 20, 21, 23, 24, 28-30, 34 and 37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45, 46, 48-50 and 52 is/are allowed.
- 6) ☒ Claim(s) 14-19, 25-27, 32, 33, 35, 36, 38 and 41-44 is/are rejected.
- 7) ☒ Claim(s) 47 and 51 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Amended claims 21 and 23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Independent claim 21 has been amended to include the structural element of an overlay which is drawn to a nonelected species.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21 and 23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Objections***

2. Claims 47 and 51 are objected to because of the following informalities: In line 2 of claims 47 and 51: The term --to-- should be inserted after the term “coupled”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 14-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pennington et al. '078 (note especially Figures 29-32; column 2, lines 6-14; column 13, lines 43-67; and column 14, lines 1-40).

5. Claims 25-27 and 41 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,377,370 to Foster et al. (note especially Figures 1-4; column 1, lines 18-49; column 2, lines 10-28; column 3, lines 15-68; and column 4, lines 1-24).

6. Claims 33, 35, 36, 38 and 42-44 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Adams '065 (note especially Figures 3, 4 & 6-9; column 2, lines 30-38; column 5, lines 44-67; and column 6, lines 1-21).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al. '370. Foster et al. do not specifically disclose a condition wherein the mattress includes a plurality of mattress sections. It would have been obvious at the time the invention was made to form the mattress of Foster et al. '370 as a plurality of mattress sections, since it has been held that

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constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

### ***Response to Amendment***

In response to Applicants' arguments on pages 9 and 10 of their amendment concerning claim 25, the examiner respectfully maintains that Foster et al. still disclose the use of a mattress section (26) combined with a patient support (10), wherein the width dimension of the mattress is greater than the width dimension of the top surface of the apparatus frame (elements 34 and the portion of element 18 disposed between elements 34 as shown in Figure 1) as claimed. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Furthermore, Applicants' arguments on pages 10, 11, 13 and 14 of their amendment with respect to claims 21 and 23 have been considered but are moot since these claims have been withdrawn from consideration.

In response to Applicants' arguments on pages 11 and 12 of their amendment concerning claim 33, the examiner respectfully maintains that Adams still discloses the use of a retainer (82) having first and second members (as shown in Figure 7) configured to engage first and second accessory rails (80, also as described in column 6, lines 1-4 & 8-12) to maintain a width extender (76-79) in a desired position on the frame (1) as claimed. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Lastly, in response to Applicants' arguments on page 12 of their amendment regarding claim 14, the examiner respectfully disagrees and maintains that Pennington et al. still disclose the use of a

patient support surface (138, 140, 142) which is inherently removable and storable as claimed (please also note Figures 15-18; column 9, lines 29-33 and column 10, lines 18-39).

***Allowable Subject Matter***

9. Claims 45, 46, 48-50 and 52 are allowed.
10. Claims 47 and 51 are objected to but would be allowable if rewritten to overcome fully the minor informalities noted above and in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Malcolm '295.
12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

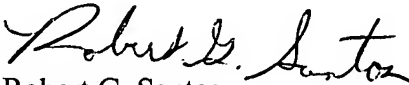
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
April 30, 2005